IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4171 of 1995

GANESHA RAM & ORS
V/S
BOARD OF REVENUE & ORS

Mr. SUNIL BENIWAL, for the appellant / petitioner

Mr. VIJAY BISHNOI , for the respondents
Mr. RJ POONIYA ,

Date of Order : 25.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this writ petition, the petitioner seeks to challenge the judgments Annexure 6 and 7, being dated 7.1.89, passed by the Additional Divisional Commissioner, and that of the Board of Revenue. However, learned counsel for the petitioner submits that this mention of the order dated 7.1.89 is by mistake, and the orders sought to be challenged is order dated 30.5.83 (Annexure 5) as order dated 7.1.89 is in favour of the petitioner. To this the learned counsel also does not dispute to be an accidental error, and nothing turns on it. Be that as it may.

The controversy involved in this writ petition, as appears from the averments made in the writ petition is, that the petitioner purchased 33.5 bighas of land,

comprised in Khasra No.337, on 30.6.68, and on that basis a mutation was sanctioned on 1.10.70. Against that mutation, an appeal was filed in the year 1982, alleging inter alia, that the land was joint land of Jetha, Mula and Salu, and Jetha could not sale a specified portion therefrom, and therefore, the mutation was challenged.

Learned Additional Collector, vide judgment Annexure 5 dated 30.5.83 allowed the appeal, and set aside the mutation. It was found, that the co-tenant has sold particular portion of the land without consent of the other co-tenants. Against that order, an appeal was filed by the petitioners, which was allowed vide Annexure 6 dated 7.1.89, finding that since the sale was effected in the year 1968, by the time the appeal was filed in the year 1982, and the purchasers had perfected their title by adverse possession. Against this, a revision was filed before Board of Revenue by Mularam, and the Board of Revenue found, that a specific land with boundaries has been sold, which constituted a portion of joint land, which could not be sold without consent of other co-tenants, and therefore the mutation was liable to be set aside, and accordingly it was set aside.

The orders are challenged, inter alia, on the ground, that the Revenue Court has very limited jurisdiction, then it has been contended that appeal

against mutation was filed much belatedly, which was barred by time and could not have been entertained, more so when mutation proceedings are mere fiscal proceedings. Other ground raised is, that though Jetha has transferred his specific portion, but specific portion has been admitted by all the respondents in the revenue suit, and on the basis of previous partition, the suit was decreed, and the portion which was transferred to the petitioners, came to the share of Jetha, therefore, the sale is valid. Then, the plea of adverse possession is reiterated. Other ground taken is, that unless sale is set aside, the impugned orders could not be passed.

I find on the record the certified copy of mutation as Annexure 1, copy of the plaint of the suit filed by Lala for partition on 2.3.82 as Annexure 2, wherein the petitioner's seller along with Salu and Mula are defendants No.1, 2 and 3 respectively. Then Annexure 3 is the written statement filed by Mula, so also the written statement filed by Jetha, the seller of the petitioner, then Annexure 4 is the site plan filed in that suit. Then Annexure 8 is the judgment passed in the said revenue suit on 31.3.84, while Annexure 9 is the decree sheet.

A perusal of the plaint Annexure 2, and the judgment Annexure 8 shows, that Khasra No.337 comprised of 190 bigha, and out of that 33 bigha 19 biswas has been sold

by Jetha to the petitioners, and therefore, excluding that portion of land of Khasra No.337, the remaining 156 bigha and 19 biswas was considered to be available for partition, and it was pleaded, that in this land Jetha's claim survives to the extent of 5 bigha. Then in para 3 of the plaint, the land was pleaded to be partitioned mutually 10 years back, and in column No.2 therein, 80 bigha 13 biswas of land, comprised of Khasra No.337, and 14 biswas of Khasra No.336, was pleaded to be falling in the share of Salu, Jetha and Mula, out of which Jetha was alleged to have sold his portion of land. In this background, a look at Annexure 8 and 9 shows, that only 156 bigha and 19 biswas of land of Khasra No.337 has been partitioned, in the manner, that 38 bigha 3 biswas has been given to Lala, another 38 bigha 3 biswas to Bhera, and 80 bigha 13 biswas come to Salu, Mula and Jetha collectively. These portions are depicted by red, green and yellow colours respectively, in the site plan produced here as Annexure 4. A look at the site plan further shows, that the land bearing Khasra No.337/1 is also shown, which was not taken by the parties, to be the land in question, for the purpose of partition, in the partition suit, and it is this land, bearing Khasra No.337/1, which has been mutated in favour of the petitioners vide Annexure 1.

Admittedly, the judgment and decree Annexure 8 and 9 have not been challenged by Salu, Jetha and Mula, so

as to lay any claim for any land beyond one allotted to them in the said judgment.

This being the factual position, after seeing the site plan Annexure 4, learned counsel for the petitioner submits, that the petitioner does not, and never, lay any claim on any portion of the land shown by yellow colour in Annexure 4. Likewise, learned counsel for the respondents also submits, that they also do not claim on any portion of the land as shown by yellow colour in Annexure 4.

In my view, in view of these statements of both the learned counsel for the parties, no controversy survives, and the mutation, obviously is, therefore, found to be rightly sanctioned.

Consequently, the writ petition is allowed, and the Annexure 5 and 7 are set aside, and the mutation Annexure 1 is upheld.

The parties are left to bear their own costs.

(N P GUPTA),J.

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